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Stephen Tierney: Why is Scottish Independence Unclear?



As commentators we seem to end many of our contributions to the independence debate with the rather unhelpful conclusion that much remains, and will continue to remain, uncertain; a state of affairs accentuated by recent comments on the prospect of [currency union](#) and [EU membership](#). This must frustrate those hardy souls who read to the end of our blogs

seeking enlightenment. Perhaps then we owe readers an explanation as to *why* it is so hard to offer a clear picture of how an independent Scotland will be brought about and what it would look like.

In trying to envisage life after a Yes vote it is natural to begin with the Scottish Government's [White Paper](#) published in November 2013 which, at 648 pages, cannot be accused of failing to set out the SNP's broad vision for

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independence. But for several reasons we must treat this only as the start of our quest and certainly not as a definitive template for a new Scottish state.

Here are some reasons why:

1. The White Paper is selective

The White Paper is certainly comprehensive but inevitably offers if not a Panglossian then at least an optimistic picture of the future, using evidence that supports the Scottish Government's case for economic success and relatively easy transition to statehood. Inevitably many of these claims have been subject to contestation, and since they are dependent upon varying circumstances and the cooperation of other actors, not least the UK Government, they cannot be taken to be the last word on independence.

2. Are we sure there will be negotiations?

This is surely the easiest question to answer. The White Paper not unreasonably assumes a process of mutually cooperative negotiations given the [Edinburgh Agreement](#) in which the UK and Scottish governments undertook 'to work together constructively in the light of the outcome, whatever it is, in the best interests of the people of Scotland and of the rest of the United Kingdom.' This has recently been [restated](#) by a UK Government minister. It can also reasonably be assumed that despite the bluster of the referendum campaign it will be in the interests of the UK to build a constructive relationship with its near neighbour. But there are still many [unknowns](#) concerning the negotiation process and its possible outcomes.

3. Who will negotiate?

On the one hand we would expect the Scottish Government to take the lead for Scotland. But let's not forget the Yes campaign is a broader church than simply the SNP, and different contributors to this, such as the Green Party, will have their own agendas which they would seek to advance in negotiations with the UK. Furthermore, in the White Paper the Scottish Government announced that it 'will invite representatives from the other parties in the Scottish Parliament, together with representatives of Scottish civic society, to join the Government in negotiating the independence settlement.' (para 2.7) [Who might take part](#), what influence would these other actors have, and how might their influence re-shape the negotiations? Also, on the UK side different uncertainties present themselves. We assume the UK Government will negotiate for the UK, but with a general election in May 2015 a new government may take a different view of the negotiation

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process.

4. What if negotiations break down?

An unlikely scenario but one which does add more uncertainty to the mix is the possibility of failure of these negotiations to result in agreement. If negotiations do indeed break down, what then: a unilateral declaration of independence? This possibility has rarely been considered within the Scottish debate but it would raise a new set of issues regarding both the terms of separation between Scotland and the UK, at which point [international law](#) would provide some guidance as to the default position, and for Scotland's [status internationally](#).

5. Will there be a deal?

We can expect a deal at the end, but in light of the 'personnel' issues considered at point 3 the terms of any negotiated deal are hard to predict. How many of the goals to which it aspires in the White Paper will the Scottish Government achieve, and on which issues will it have to compromise, not only with the UK but with other parties to the negotiations on the Scottish side?

6. Surely experts can predict the outcome of negotiations?

Given that a UDI is highly unlikely, as commentators we can reasonably focus upon the terms of negotiations, but here voters must be struck by how we suffix our references to the most likely outcomes by restating how many variables are at work. It is no surprise that on the various issues at stake experts will reasonably disagree about different scenarios. As commentators we also have a duty not to enter the debate in a polemical way, using expert knowledge to advance the cause of one particular side. It is important to remain objective, presenting the evidence for the different sides of each argument as best we can.

7. Clarity and simplicity are not synonyms

The subject matter for negotiations could scarcely be more complex – disentangling a state with a highly integrated advanced economy. So many issues will need to be addressed together that even listing the topics to be dealt with is a difficult, and inevitably an incomplete, task: the economy, the currency, debt, welfare, pensions, oil and gas, higher education, the environment, defence, the European Union, security and intelligence, borders, citizenship, broadcasting etc. etc. Issues surrounding each of these issues will have to be negotiated. Therefore, there is reasonable disagreement among commentators about the nature of the competence

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which an independent Scotland would acquire in relation to each of these, and as to the prospects for some degree of on-going cooperation or union with the UK in relation to each area of competence. And even if we commentators can reach some kind of consensus about a particular issue taken in isolation we need to factor in that each is a potential bargaining chip in negotiations. There may well be trade-offs which see some aspects of the Scottish Government's preferred model of independence subject to compromise in return for other gains.

8. It's politics, stupid

What would make things clearer? Well the obvious solution to a lot of uncertainty would be agreement between the two governments on a range of issues ahead of the referendum. The [Electoral Commission](#) (paras 5.41 - 5.44) has recommended ‘that both Governments should agree a joint position, if possible, so that voters have access to agreed information about what would follow the referendum. The alternative – two different explanations – could cause confusion for voters rather than make things clearer.’

But this is not going to happen. Uncertainty among voters is an important card for the Better Together campaign. It is simply not in the political interests of the UK Government to work with the Scottish Government to clarify possible negotiation outcomes. And in any case it may not be in the interests of the Scottish Government either should such pre-referendum discussions result in stalemate, thereby serving only to heighten rather than diminish uncertainty before the vote.

9. After independence: designing Scotland's constitution

Even if negotiations are concluded and independence formally endorsed we will not have a final picture of Scotland's constitutional future. Scotland will not [at that stage](#) have a constitution. According to the White Paper there will be an interim period during which some form of transitional arrangement will be needed. There will then be a Scottish parliamentary election in May 2016, and only after this, according to the White Paper, will a constitutional convention be established to draft a constitution. So many of the proposals set out in the White Paper concerning Scotland's constitution are contingent upon how this convention is established, how it will draft a constitution, what this will contain, and how it will be ratified (i.e. will it be approved by the Scottish Parliament or by way of another referendum).

And what would the institutions of government in an independent Scotland look like: will the Queen be head of state? Will there be a one chamber or

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two chamber parliament? Will Scotland have a new constitutional court? The Scottish Government has views on these issues but also accepts they will be for the constitutional convention to determine. And what institutional arrangements would be needed to maintain areas of cooperation or union with the UK? All of these issues will remain to be settled.

10. It takes three to tango

And of course the foregoing issues focus upon Scotland's relationship with the UK. What of Scotland's external relations? Issues such as state recognition; succession to international rights, obligations and treaties; and membership of international organisations, all remain to be fully worked out. And most crucially, the European Union presents two huge issues. The first is how Scotland will be admitted to membership, something which remains a focus for [debate](#), not helped by the [bizarre interventions](#) of senior EU politicians. The second issue is surely much more salient and the source of more reasonable disagreement, namely the [terms of such admission](#).

11. What is 'independence' anyway?

All of these questions raise a larger issue, namely the heavily integrated nature of the modern nation-state and the web of international relations which bind states within Europe. As the details of the Scottish Government's proposed model of independence emerge, for example in relation to the currency, what is envisaged is in fact the continuation of important relationships with the UK as well as new and close relations with international partners. But clarity on these points is obscured by campaign gaming. The Yes side is reluctant to voice these aspirations in detail since this will invite the 'we will never agree to that' response which we have seen in relation to currency union. This will inevitably mean that much of the detail of what the Scottish Government aspires to will most likely remain unstated at the time of the referendum. The challenge for voters then is a broader one: it concerns how they understand the very meaning of statehood and sovereignty in today's Europe. The reality today is that any new state emerging from within the EU and intending to remain within the EU will, by definition, instantiate a novel form of statehood which delivers independence but not separation. This, a unique state of affairs, is the factor which poses the deepest analytical challenges to political actors, to constitutional theorists and practitioners, and, since a referendum is the mechanism assigned to determine such an outcome, ultimately to voters.

Is there any point in expert commentary?

Yes of course. There are many technical issues which can be clarified. This

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will not fully explain how Scottish negotiations will go with either London or Brussels but it can make clearer the issues which will be subject to negotiation.

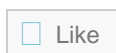
Secondly, much of the uncertainty stems from the political positions of the two sides: Better Together which does not want to suggest negotiations will go smoothly for the Scottish Government; Yes Scotland which claims that they will. However, the UK Government's position following the hard reality of a Yes vote is likely to be significantly different from that as stated in the heat of the referendum campaign. Again academics must try to disentangle these two different positions. At the same time they can probe the viability of the claims made by the Scottish Government in its White Paper.

In the end some kind of bigger picture may emerge, albeit through a glass darkly. People when they vote will do so with two rival visions of the future in mind. These will not be perfect predictions of what either an independent Scotland or an on-going UK (we must also remember that a No vote also carries many uncertainties concerning the future) will look like in 1, 5 or 10 years' time, but they will need to make sense to the people casting their votes. As commentators, all we can do is try to offer some objective guidance so that these visions bear closer resemblance to reality than they otherwise might. A modest aim maybe, but no one ever said constitutional change was simple.

Stephen Tierney is a Professor of Constitutional Theory at the University of Edinburgh and Director of the [Edinburgh Centre for Constitutional Law](#). He is currently ESRC Senior Research Fellow under the [Future of the UK and Scotland programme](#).

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6 responses to “*Stephen Tierney: Why is Scottish Independence Unclear?*”

John Dowdle

February 25, 2014 at 8:07 am



No one has asked the English, Welsh and Northern Irish what their views are on this. If a “Yes” vote results from the referendum, will not they have to be asked to agree to a new constitutional settlement based on an English-, Welsh- and Northern Irish-only referendum?

If the Conservatives were to win the next general election, David Cameron has pledged to hold a referendum on continuing EU membership after a period of renegotiation with the EU. What if that referendum results in an “Out” vote, particularly if negotiations with Scotland are still ongoing?

Would it not make more sense to wait until after the next general election in 2015 and for the results of a UK-wide referendum on continuing EU membership – probably sometime during 2017 – before holding a Scots referendum on independence?

The world was a very much simpler place 307 years ago. Then, enacting and enabling a union between all the constituent parts of the UK was a very much simpler task. We – all of us – are only just beginning to realise just how much more complex and complicated breaking that union apart is. It is all very well watching the film “Braveheart” for a while and falling in love with earlier and simpler times but we no longer live in that world. The one we live in today is much messier and more complex than that.

I believe the people of Scotland will realise that falling for simplistic SNP

propaganda is no way to live in the modern world.

I believe they will vote accordingly.

One thing is for sure: the rest of the UK will not be the losers in the event of a “Yes” vote. Scotland could end up just as isolated as it was in 1707, when it was they who sought the union; not the rest of the UK.

[Reply](#)

barry winetrobe

February 25, 2014 at 9:10 am



An excellent & timely post, Stephen. As you know, the HL Constitution Cttee has begun an inquiry on many of these thorny issues: <http://www.parliament.uk/business/committees/committees-a-z/lords-select/constitution-committee/inquiries/parliament-2010/scottish-independence/>. However, it seems to be rather ‘under the radar’, with only, as of this morning, 4 written submissions – and the deadline is 28 Feb. I submitted evidence trying to address some of Stephen’s points (<http://data.parliament.uk/writtenevidence/WrittenEvidence.svc/Evidence>).

By the way, thanks for the link to Iain Mclean’s recent piece on the ‘known unknowns’, which I had missed. I see one of the comments added refers to the name of the ‘rUK’. In a post for a now defunct blog, I suggested 7 alternative names, including ‘Engniwal’ (or variations thereof) and ‘Little Britain’.

[Reply](#)

largslab

February 25, 2014 at 1:01 pm



Scottish “independence” is unclear because the SNP, the principal proponent of the idea, doesn’t want clarity.

In eighty years of existence and seven years in government, the SNP has been too lazy to clarify its definition of “independence” (share the Queen, share the Pound, keep the oil, share Welfare spending, NATO in/out...??) or whether it even wants “independence” as opposed to version of fiscal autonomy no different from a standard federal model.

Indeed, too much clarity on some of these issues would cause splits in the SNP and the Yes campaign. Some of the groups who see “independence” as a means to address other issues would see their ambitions revealed as

unlikely to be achieved.

Those of us (the majority currently) who don't want "independence – and the parties that represent us – are under no obligation to clarify Scottish "independence" and certainly not when the SNP is unwilling and/or unable to provide any clarity on its one-and-only reason for existence.

[Reply](#)

Gav

February 25, 2014 at 1:03 pm



As a Scot living abroad, I tend to think that – in this fog of competing claims – most ordinary folk are going to make this call based on an instinctive sense of their own identity, rather than on a rational weighing of the pros and cons. That's also my anecdotal experience among friends and family who are grappling with this choice right now. And perhaps – given what you say – that's not such a bad approach. Amidst all the half-claims and crystal-ball-gazing, it comes down to this: what does your heart tell you?

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Gordon Jackson

February 27, 2014 at 3:50 pm



"But this is not going to happen. Uncertainty among voters is an important card for the Better Together campaign. It is simply not in the political interests of the UK Government to work with the Scottish Government to clarify possible negotiation outcomes. And in any case it may not be in the interests of the Scottish Government either should such pre-referendum discussions result in stalemate, thereby serving only to heighten rather than diminish uncertainty before the vote."

There are of course two sides to this problem. The currency union intervention, for instance, was in principle at least an example of all three major Westminster parties (plus the permanent secretary to the Treasury) clarifying their position on the currency. In reality it just created more confusion – now we have the Yes side arguing that what the

No side say they will do is inaccurate and that when the negotiations actually happen they'll back down and do the complete opposite.

Now I'm not going to argue about who is right in that situation, but it does show that Westminster clarifying their position is only worth something if the Yes side accept it (and by the same token is only worth something if it's a genuine statement of intent rather than campaigning).

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